IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.13400 OF 2024
IN
WRIT PETITION NO.11610 OF 2022

The Official Liquidator ***...Applicant***
(original Respondent No.2)

V/s.

1. Savannah Lifestyle Private Limited.
2. Milind Kasodkar
   Resolution professional of M/s. Shaila Clubs & Resorts Private Ltd. ***...Respondents***

REVIEW PETITION NO.85 OF 2024
WITH
INTERIM APPLICATION NO.10662 OF 2024
IN
WRIT PETITION NO.11610 OF 2022

Amit Prabhakar Kore ***...Review Petitioner***

V/s.

1. Savannah Lifestyle Private Limited.
2. Special Recovery Officer, Vasantdada Shetkari Sahakari Bank Ltd.
3. The Official Liquidator, Vasantdada Shetkari Sahakari Bank Ltd.

2. Milind Kasodkar
   Resolution professional of M/s. Shaila Clubs & Resorts Private Ltd.
5. Sanjay Mahadeo Pratap

6. Mohamad Iqbal Abdul Ghani Bhatti

7. Khalil Ahmad Abdul Ghani Bhatti

8. Abdul Khalil Abdul Ghani Bhatti

9. Jabir Abdul Ghani Bhatti ***...Respondents***

WITH
REVIEW PETITION NO.38 OF 2023
WITH
INTERIM APPLICATION NO.17497 OF 2023
IN
WRIT PETITION NO.11610 OF 2022

M/s. Shaila Clubs & Resorts Private Limited ***...Petitioner (original Respondent No.3)***

V/s.

1. Savannah Lifestyle Private Limited.

2. Special Recovery Officer

3. The Official Liquidator

4. Sanjay Mahadeo Pratap

5. Mohamad Iqbal Abdul Ghani Bhatti

6. Khalil Ahmad Abdul Ghani Bhatti

7. Abdul Khalil Abdul Ghani Bhatti

8. Jabir Abdul Ghani Bhatti ***...Respondents***

Mr. Navroz Seervai, *Senior Advocate with Mr. Aseem Naphade and Mr. Shivaji Masal for the Applicant in IA/13400/2024 in WP/11610/2022.*

Mr. Vikram Nankani, *Senior Advocate with Mr. Ameet Naik, Mr. Tushar Hathiramani, Mr. Abhishek Kale, Mr. Vivek Dwivedi, Mr. Nevil*

Chopra, Mr. Aditya Khare and Ms. Rebecca Singh i/b. M/s. Naik Naik and Co. for the Review Petitioner.

Dr. Virendra Tulzapurkar, *Senior Advocate with Mr. Mandar Soman, Ms. Shruti Maniar, Ms. Shivani Bhandary and Ms. Kashmita Belwalkar i/b. M/s. Solomon and Co. for Respondent No.1.*

Mr. Suresh Yadav *with Mr. Avinash Khondkar and Ms. Khushbu Bhansali for Respondent No.4.*

Mr. P.V. Nelson Rajan, *AGP for Respondent -State.*

Ms. Savina R. Crasto, *AGP for Respondent-State in RPW/85/2024 & IA/10662/2024.*

CORAM : SANDEEP V. MARNE, J.

Judgment reserved on : 26 February 2025.

Judgment pronounced on : 11 March 2025.

Judgment:

A. THE CHALLENGE

1) Liquidator of Vasantdada Shetkari Sahakari Bank Ltd. (**the Bank**) has filed Interim Application No. 13400 of 2024 seeking recall of order dated 21 October 2022, which is passed in view of Minutes of Order dated 20 October 2022. Review Petition No.85 of 2024 is filed by Mr. Amit Prabhakar Kore, suspended director of M/s. Shaila Clubs & Resorts Private Limited (**Shaila Clubs**) seeking review of Order dated 21 October 2022. Shaila Clubs has filed Review Petition No. 38 of 2023 seeking review of the Order dated 21 October 2022.

2) Thus, the Interim Application and the two Review Petitions essentially seek either recall or review of order passed by

this Court on 21 October 2022 disposing of Writ Petition No.11610 of 2022 based on Minutes of Order tendered on 20 October 2022. Since all the three proceedings seek either recall or review of the same order, the same are decided by this common judgment.

B. FACTS

3) Considering the narrow controversy involved in the present application and review petitions, it is not necessary to narrate the chequered history of the case. Shaila Clubs owns and operates a recreational club at Plot No. NA/164(Pt) CTS No.C/12/A, Everest Cooperative Housing Society Limited, 151, Hill Road, Bandra (West), Mumbai 400 050. For the purpose of setting up and commencing the recreational club, Shaila Clubs applied for loan from the Bank as well as from the Greater Bombay Co-operative Bank. On 2 May 2005 both the Banks agreed to sanction credit facilities in favour of Shaila Clubs, which were duly secured by the Shaila Clubs by mortgaging its property at Bandra vide registered Deed dated 27 May 2005. It appears that Shaila Clubs repaid entire loan amount disbursed by Greater Bombay Co-operative Bank and the Bank remained the sole mortgagee in respect of the Shaila Clubs premises since the Bank's loan was not fully repaid.

4) By Conducting Agreement dated 18 May 2007, Shaila Clubs permitted M/s. Savannah Lifestyle Private Limited (**Savannah**) to operate the recreational club for a period of 15 years and 6 months in consideration of monthly royalty and compensation. It is Bank's case that since Shaila Clubs defaulted in repayment of loan disbursed by the Bank, its account was classified as NPA and the Special Recovery Officer of the Bank initiated recovery proceedings

against Shaila Clubs. The Bank obtained recovery certificate from Deputy Registrar of Co-operative Societies, Mumbai, under Section 101 of the Maharashtra Co-operative Societies, 1960 (**M.C.S. Act, 1960**) and filed an application before the Additional Chief Metropolitan Magistrate, Esplanade, Mumbai, seeking physical possession of the Shaila Clubs' land and property. By order dated 22 October 2018, the learned Additional Chief Metropolitan Magistrate allowed the Application preferred by the Bank and authorised the recovery officer to take over possession of the properties of Shaila Clubs under police assistance. Savannah filed Writ Petition No.14517 of 2018 in this Court challenging the Magistrate's order dated 22 October 2018. By order dated 20 December 2018, this Court granted interim stay to the Magistrate's order on condition of deposit of amount of Rs.50,00,000/- by Savannah. It appears that Savannah filed application bearing C.C. No.1052/MA/2019 before the Chief Metropolitan Magistrate seeking recall of the order dated 22 October 2018. The application was however rejected by the learned Magistrate by order dated 19 June 2019. Savannah filed Writ Petition No.7542 of 2019 before this Court challenging Magistrate's order dated 19 June 2019. For showing bonafides, Savannah was made by this Court to deposit an amount of Rs.2 crores. On condition of such deposit, this Court stayed possession order passed by the learned Magistrate. By order dated 17 January 2020, Writ Petition No.7542 of 2019 was allowed by setting aside Magistrate's order dated 19 June 2019 and the matter was remanded before the learned Magistrate for fresh decision in accordance with law. The learned Additional Chief Metropolitan Magistrate thereafter passed order dated 4 March 2020 once again dismissing Savannah's application for recall of the order dated 22 October 2018 holding that Conducting Agreement did not create tenancy in favour of Savannah. Savannah filed Writ Petition

No.11610 of 2022 [Writ Petition (Lodging) No.5289 of 2020] challenging Addl. CMM's order dated 4 March 2020. Initially, interim stay was granted to the Magistrate's order by order dated 20 March 2020.

5) In the meantime, Shaila Clubs was admitted into Corporate Insolvency Resolution Process (**CIRP**) in pursuance of order passed by the National Company Law Tribunal (**NCLT**) on 29 October 2021 in pursuance of Petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by legal representatives one Mrs. Meghna Rajeev Kore. Accordingly, Resolution Professional was appointed in respect of Shaila Clubs. Bank filed its claim with the Resolution Professional and became part of committee of creditors. Savannah also filed its claim against Shaila Clubs.

6) In the above background, it appears that Government of Maharashtra issued Government Resolution (**GR**) dated 6 June 2022, granting permission to undertake one time loan payment settlement for Urban Co-operative Banks as per the scheme declared in Annexure-A. The Liquidator of the Bank accordingly sent One Time Settlement (**OTS**) proposal to Savannah calling upon it to deposit an amount of Rs. 77,16,350/- on behalf of Shaila Clubs for closure of the loan account. Savannah responded vide its letter dated 11 August 2022. Though Savannah showed willingness to deposit amount of Rs. 77,16,350/-, it requested the Liquidator not to close the loan account of Shaila Clubs but to assign the same alongwith all security, rights and benefits to Savannah and substitute Savannah in place of the Bank. In the above background, it appears that the Bank and Savannah signed and submitted Minutes of Order dated 20 October 2022 in Writ Petition No.11610 of 2022 before this Court, under which it was

agreed that actual dues of Shaila Clubs to the Bank is Rs. 8,97,73,098/- and that Savannah had already deposited amount of Rs.2,50,00,000/- with the Bank and Savannah offered to pay further amount of Rs.87,92,000/- to the Bank. Accordingly, Savannah paid amount of Rs.87,92,000/- to the Bank. Under the Minutes of Order, the Bank assigned the loan amount of Shaila Clubs alongwith all rights, securities, mortgages, charges, remedies and benefits attached thereto in favour of Savannah. The Petition was agreed to be withdrawn under the Minutes of Order. This Court accordingly disposed of Writ Petition No.11610 of 2022 by taking on record the Minutes of Order dated 20 October 2022 in terms thereof.

7) It appears that the suspended director of Shaila Clubs Mr. Amit Kore complained to the Liquidator vide letter dated 17 November 2022 objecting to assignment of loan of Shaila Clubs to Savannah. The Bank addressed letter dated 17 November 2022 to the Resolution Professional requesting him not to act on the Minutes of Order and asserting that the mortgaged property of Shaila Clubs was still with the Bank. The Bank thereafter wrote to Shaila Clubs on 18 November 2022 referring to the objections of Mr. Amit Kore and stating that the OTS offered to Savannah has been cancelled and returning the amount of Rs.87,92,000/- to Savannah. However, Savannah refused to accept the demand drafts. The Liquidator also filed an affidavit in Writ Petition No.11610 of 2022 bringing on record the subsequent events and recorded that the decisions to offer benefit of OTS scheme to Savannah and to enter into consent terms were incorrect.

8) On the strength of the Order dated 21 October 2022 passed by this Court in terms of the Minutes of Order, Savannah filed

Petition under the provisions of Section 7 of the IBC against Shaila Clubs. The Bank once again wrote to Savannah on 13 January 2023 about withdrawal of the OTS scheme extended to it.

9) In the above background, Shaila Clubs has filed Review Petition No.38 of 2023 for review of the order dated 21 October 2022. The Bank filed its claim for Rs.9,53,39,914/- with the Resolution Professional and also filed intervention application before the NCLT in Petition filed by Savannah against Shaila Clubs. On the basis of Petition filed by Savannah, NCLT once again admitted Shaila Clubs into CIRP appointing Resolution Professional by order dated 28 July 2023. The Bank challenged NCLT's order dated 28 July 2023 before the National Company Law Appellate Tribunal (**NCLAT**). One of the suspended directors and shareholders of Shaila Clubs also filed appeal before the NCLAT. NCLAT passed interim order dated 27 September 2023 directing that no further steps be taken in pursuance of order dated 28 July 2023.

10) Savannah filed Writ Petition (L) No.31466 of 2023 challenging Bank's cancellation of OTS offer. By order dated 6 March 2024, this Court stayed Bank's cancellation of OTS scheme. The said Petition is pending. In the above background, the Bank has filed Interim Application No.13400 of 2024 seeking recall of the order dated 21 October 2022. Similarly, suspended director of Shaila Clubs -Mr. Amit Prabhakar Kore has filed Review Petition No.85 of 2024 seeking review of the order dated 21 October 2022.

C. SUBMISSIONS

11) Mr. Seervai, the learned senior advocate appearing for the Bank through the Liquidator would submit that the order dated 21

October 2022 passed by this Court based on Minutes of Order dated 20 October 2022 is *ex facie* erroneous and deserves to be recalled. He would submit that the compromise sought to be entered into between the Bank and Savannah vide Minutes of Order dated 20 October 2022 is not lawful. He would submit that the Minutes of Order were filed in completely unrelated proceedings filed by Savannah challenging mere Magistrate's order for recovery of possession of Shaila Clubs property. That Savannah is merely a conducting party in respect of the premises of Shaila Clubs and did not otherwise have any authority to settle the loan account of Shaila Clubs. That under the Minutes of Order, Savannah is shown to have stepped into the shoes of the Bank and became transferee of loan account of the Shaila Clubs by paying paltry sum of Rs.87,92,000/-. That as on the date of filing of Minutes of Order, the total dues of Shaila Clubs to the Bank were to the tune of Rs.8,97,73,098/- whereas Savannah paid total amount of Rs. 3,37,92,000/- and has become transferee in respect of the loan account with right to recover the entire loan amount from Savannah by dealing with the mortgaged assets of Shaila Clubs. Mr. Seervai would submit that under the Reserve Bank of India Directives, a private party cannot be permitted to be a transferee in respect of NPA loan account of a Bank. He would rely upon Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021 (**RBI Directives)** issued under the provisions of Sections 21 and 35A of the Banking Regulations Act, 1949 in support of his contention that the only entities listed in Clause (3) of the RBI Directives could be recognised and eligible transferees in respect of a loan account. That it is not lawful for the Bank to transfer loan account in favour of a private entity under the RBI Directives. He would also rely upon GR dated 6 June 2022 in support of his contention that under the OTS scheme introduced vide said GR, it was not lawful to enter into arrangement

of transfer of loan in favour of Savannah. He would submit that under the provisions of Sections 21 and 35A of the Banking Regulation Act, the RBI Directives are binding. He would rely upon judgment of Apex Court in ***Sudhir Shantilal Mehta V/s. Central Bureau of Investigation***[1] in support of his contention that Directives issued by the RBI under Sections 21 and 35A of the Banking Regulation Act are binding in nature. That since the Minutes of Order are in violation of RBI Directives, the same are not lawful within the meaning of Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (**the Code**). That since the compromise is not lawful, order recording compromise is liable to be recalled.

12) Mr. Seervai would further submit that order dated 21 October 2022 is otherwise required to be recalled in view of ratio of the judgment of the Apex Court in ***Ajay Ishwar Ghute and others V/s. Meher K. Patel and others***[2] wherein the Apex Court has adversely commented upon practice followed in this Court in passing orders based on Minutes of Order. He would also rely upon the judgment of the Apex Court in ***Suleman Noormohamed and Ors. V/s. Umarbhai Janubhai***[3] in support of his contention that if the Judge does not record satisfaction about lawful compromise, order recording compromise can always be recalled.

13) Mr. Seervai would submit that the Liquidator has *locus* to maintain the present application and that mere expiry of term of Liquidator under Section 109 of the MCS Act does not mean that the Liquidator cannot maintain the present proceedings. He would submit that until submission of report by the Liquidator, the liquidation

1 (2009) 8 SCC 1
2 2024 SCCOnLine SC 681
3 (1978) 2 SCC 179

proceedings do to terminate. In support of his contention, he would rely upon judgment of the Apex Court in ***Goa State Cooperative Bank Limited V/s. Krishna Nath A. (dead)through legal representatives and others***[4]**.** He would submit that Liquidator is yet to submit his final report and therefore its mandate has still not come to an end. He would further submit that Bank's application for recall of order dated 21 October 2022 cannot be dismissed only for the reason of delay in filing the same. He would submit that mere delay, not involving latches, acquiescence or estoppel, would not prevent this Court from exercising inherent power of recalling its order. That inherent power of recall of order need not be conferred and cannot be circumscribed by considerations of delay. In support of his contention, he would rely upon the following judgments:

(i) ***Annada Prasad Mitra V/s. Sushil Kumar Mandal***[5]

(ii) ***Somar Bhuiya and Ors. V/s. Kapil Kumar Gautam and Ors.***[6]

(iii) ***Pooranchand Mulchand Jain V/s. Komalchand Beniprasad Jain***[7]

(iv) ***M.M. Thomas V/s. State of Kerala and Another***[8]

(v) ***State of Maharashtra V/s. Digambar***[9]

14) Mr. Seervai would further submit that Savannah has admitted in the Affidavit-in-Reply that it is not an eligible transferee for transfer of loan under the RBI Guidelines. That Savannah's claim of Liquidator taking independent commercial decision of entering into

4 (2019) 20 SCC 38
5 1941 SCC OnLine Cal 210
6 1974 SCC OnLine Pat 95
7 1961 SCC OnLine MP 74
8 (2000) 1 SCC 666
9 (1995) 4 SCC 683

OTS scheme is baseless as Minutes of Order ultimately result in transfer of loan to any eligible transferee, which is completely unlawful. Mr. Seervai would accordingly pray for recall of the order dated 21 October 2022.

15) Mr. Nankani, the learned Senior Advocate appearing for Petitioner in Review Petition No.85 of 2022 would adopt the submissions of Mr. Seervai. Additionally, he would submit that the Minutes of Order dated 20 October 2022 travelled outside the scope of Writ Petition No.11610 of 2022, in which there was no issue of determination of liability of Shaila Clubs towards the Bank. In an unconnected Petition filed by the Conductor for protecting possession of property under its management, the liability of Shaila Clubs towards the Bank could not be settled by filing Minutes of Order. That the Minutes of Order have thus slipped in by a sleight of hand by using pendency of unconnected Petition. He would submit that the Shaila Clubs has not signed Minutes of Order and therefore arrangement between the Bank and Shaila Clubs would not bind Shaila Clubs. He would submit that since the Minutes of Order affect rights of parties, who has not signed the same, the same are unlawful and liable to be recalled. He would submit that mere presence of Advocate of Shaila Clubs at the time of passing of order dated 21 October 2022 would not mean that Shaila Clubs has consented to disposal of the Petition in terms of Minutes of Order. He would accordingly pray for review and recall of order dated 21 October 2022.

16) None has appeared on behalf of the Review Petitioner in Review Petition No.38 of 2023 filed by Shaila Clubs, possibly on account of the fact that Shaila Clubs is admitted in CIRP, and its suspended director has already filed Review Petition No.85 of 2024.

17) Interim Application and Review Petition are opposed by Dr. Tulzapurkar, the learned senior advocate appearing for Savannah. He would submit that the Liquidator does not have *locus standi* to file Interim Application No.13400 of 2024. That the Bank has been under liquidation since 7 January 2009 and under provisions of Section 109 of the MCS Act, the liquidation proceedings has come to an end on 12 February 2022. That therefore, the Liquidator did not have *locus standi* to file Interim Application No.13400 of 2024 on 21 August 2022. He would rely upon provisions of sub-rule (17) of Rule 89 of the Maharashtra Co-operative Society Rules, 1961 **(MCS Rules)** in support of his contention that after expiry of period of liquidation, the assets, actionable claims, etc. vests in the Registrar, who can appoint either custodian or receiver to realise the remaining assets and actionable claim. That only custodian or receiver can sue or defend any disputes at the end of liquidation proceedings. He would rely upon judgment of this Court in ***Ashok Kisanrao Hande and Anr. V/s. The State of Maharashtra and Ors.***[10]

18) In support of his contention that the maximum period prescribed under Section 109 of the MCS Act cannot be extended under any circumstances, he would submit that the judgment of the Apex Court in ***Goa State Cooperative Bank Limited*** (supra) is clearly distinguishable as the same involved the issue of right of the Bank to continue with recovery proceedings from defaulting members upon completion of period of liquidation. That in the present case, such right can be exercised only by Registrar himself or by custodian or receiver appointed by him. That in any case, the Liquidator does

[10] Writ Petition No.5215 of 2012, decided on 25 March 2019.

not have authority to represent the Bank and file the instant Interim Application.

19) Dr. Tulzapurkar would further submit that there is absolutely nothing illegal or unlawful in the arrangement agreed between the Bank and Savannah. That the Liquidator of the Bank has taken independent commercial decision to close its loan account by accepting amount of Rs.87,92,000/- from Savannah. He would invite my attention to the offer made by the Liquidator to Savannah vide letter dated 6 August 2022. He would submit that the RBI Directives have absolutely no application to the facts of the present case. That the said directives are applicable only in respect of NPA or stressed assets. That there is nothing on record to indicate that the loan account of Shaila Clubs was classified as 'stressed asset'. That even the GR dated 6 June 2022 does not apply to non-NPA or non-stressed asset. He would submit that the directives of the RBI or GR issued on 6 June 2022 cannot take away the right of the Liquidator to realise the assets of the Bank.

20) Dr. Tulzapurkar would further submit that so far as the Bank is concerned, it was ready to close loan account of Shaila Clubs on acceptance of amount of Rs.87,92,000/-. That the Bank need not really be concerned about purchase of loan by Savannah or Savannah filing proceedings for recovery of loan amount from Shaila Clubs. That these are independent proceedings between Savannah and Shaila Clubs with which the Bank does not have any concern. Whether the purchase transaction of loan by Savannah from the Bank is valid or not can be determined in CIRP pending before the NCLT through objection filed by Shaila Clubs and the same cannot be a reason for recall of order passed by this Court on 21 October 2022.

21) Lastly, Dr. Tulzapurkar, would submit that the minutes of order are entered into on the basis of voluntary offer made by Liquidator in pursuance of OTS scheme declared by the State Government. That Savannah never approached the Liquidator with any offer to purchase loan account of Shaila Clubs. That Savannah made a counter offer to the Bank for purchase of loan account of Shaila Clubs as a pre-condition for payment of desired amount at which the Bank was ready to settle the loan account. That Savannah has ultimately paid amount of Rs.3,37,92,000/- to the Bank for discharge of liability of Shaila Clubs though Savannah itself did not avail any credit facility from the Bank. That having spent an amount of Rs.3.37 crores, Savannah otherwise is lawfully entitled to recover the said amount from Shaila Clubs through the mortgaged assets. Dr. Tulzapurkar would submit that since there is no illegality in the compromise, the application for recall as well as review of order dated 21 October 2022 deserve to be dismissed. He would submit that interim application for recall as well as review petition of suspended director of Shaila Clubs otherwise suffer from gross delay and on that ground alone, they are liable to be dismissed.

22) In rejoinder, Mr. Seervai would submit that admittedly in the present case, no formal order is passed as mandated under Section 109 of the MCS Act by Registrar for termination of liquidation proceedings and discharging the Liquidator. That the Liquidator therefore continues to be incharge of the Bank. That the liquidator has various statutory and other duties *qua* the Applicant as set out in Section 105 of the MCS Act. He would further submit that the judgments cited by the Dr. Tulzapurkar are only on the point of period of liquidation of 15 years being mandatory and not on authority for

the proposition that liquidation proceedings stand terminated without an order of the Registrar under Section 109 of the MCS Act. That the deeming fiction under Section 109 of the MCS Act can apply only once an actual order of the Registrar is passed for termination of liquidation proceedings; thereafter, it will be deemed that liquidation proceedings stand terminated on the expiry of the 15 year period from the date the Liquidator took charge of the assets of the insolvent.

23) Mr. Seervai would further submit that the RBI Directives read as a whole and in particular Clauses 9(e), 9(l), 9(m), 9(n) and 54 clearly indicate that they apply to all types of loans transfers and not only to stressed loans. That it is not disputed that Shaila Clubs was classified as a NPA in February 2012. That the Prudential Framework Directions cannot be relied upon to interpret the RBI Directions relied upon by the Bank, which have to be interpreted on a reading of the document as a whole.

24) Mr. Seervai would further submit that the RBI Directions have statutory force and govern every transaction of assignment of debt including co-operative banks. The impugned order takes on record the minutes of order between the Bank and Savannah which envisages an impermissible and illegal assignment of debt owed by Shaila Clubs by a cooperative bank (Applicant-Bank) to an admittedly legally unqualified entity being Savannah. Hence, every transaction of assignment of debt is governed by the RBI Directions.

D. REASONS AND ANALYSIS

25) The Interim Application filed by the Bank through the Liquidator as well as the Review Petitions filed by Shaila Clubs and

its suspended director are all aimed at seeking recall or review of order dated 21 October 2022 by which Writ Petition No.11610 of 2022 came to be disposed of by this Court. It would therefore be necessary to reproduce the Order passed by this Court on 21 October 2022, of which recall/review is sought. Order dated 21 October 2022 passed in Writ Petition No.11610 of 2022 reads thus:

> 1. Petitioner and respondents no.1 and 2 are present in the Court. Dispute is settled between the parties. They have signed Minutes of Order dated 20th October, 2022. The same is taken on record and marked "X-1" for identification.
>
> 2. Parties are identified by their respective Advocates. In terms of the Minutes of Order, respondent no.2 has agreed to issue "No-Dues Certificate" to the petitioner. In view of this, nothing survives in the petition. The petition is disposed of in terms of the Minutes of Order.
>
> 3. Leave to amend. Amendment to be carried out forthwith.

26) Since Writ Petition No.11610 of 2022 is disposed of in terms of Minutes of Order dated 20 October 2022, it would be apposite to reproduce the said Minutes as well-

MINUTES OF ORDER

1. The Petitioner and Respondent No. 1 and 2 have settled their disputes out of Court.

2. By an order dated 28th of July 2022, the learned Deputy Registrar (Urban Banks), Cooperative Societies, Maharashtra State, Pune, has extended the application of the One Time Settlement Scheme dated 6th of June 2022 to the Respondent No. 2 Bank. Accordingly, among other defaulters, Respondent No. 2 has offered the benefits of the same to Respondent No. 3 as also to the Petitioner since the Petitioner is in possession of the Premises. As against the actual dues of INR 8,97,73,098/- as of today, after the credit of INR. 2,50,00,000/- by the Petitioner under orders passed by this Hon'ble Court, the Petitioner has offered to deposit a further sum of INR. 87,92,000/-only.

3. 3. Accordingly, the Petitioner has paid to the Respondent No. 2 amounts towards regularisation of NPA loan amount of Respondent.

A. Bankers Cheque No. 920861 dated 2nd September 2022 drawn on SBI Bandra West branch in favour of the Respondent No. 2 for an amount of INR 77,16,350/-; and
B. Bankers Cheque No. 920864 dated 3rd September 2022 drawn on SBI Bandra West branch in favour of the Respondent No. 2 for an amount of INR 10,75,000/-.

4. Subject to realisation of the instruments as aforesaid in paragraph no. 3 hitherto, the Respondent No. 2 has assigned the loan account of Respondent No. 3 alongwith all rights and securities, mortgages, charges, remedies and benefits attached thereto, as a secured loan, in favour of the Petitioner. The formal "No Dues" certificate shall be issued by Respondent No. 2 within a period of one week from the date of credit of the amount of INR. 87,92,000/- into its account. Respondent No. 2 will issue No Objection Certificate regarding any decision of assignment or any other relief to the Petitioner by the Resolution Professional in his jurisdiction.
5. The cause of action for the petition, having come to an end, the Petitioner seeks leave to withdraw the present Writ Petition, in terms of the present order.
6. The Petitioner seeks liberty to adjust its equities qua the sums of money as referred to in paragraph no. 2 hereinabove as against the Respondents No. 3 to 8 and/or their creditors in the pending litigation/s between them inter se and/or otherwise. The Petitioner is at liberty to do so, in accordance with law.

7. The Writ Petition is accordingly disposed of, with no orders as to cost.

27) Before proceeding to decide whether the compromise recorded vide Minutes of Order dated 20 October 2022 is lawful or not, it would be necessary to examine the background in which Writ Petition No.11610 of 2022 came to be filed by Savannah. As observed above, the Bank had secured recovery certificate against Shaila Clubs under Section 101 of the MCS Act and towards execution of the said recovery certificate, the Special Recovery Officer of the Bank had filed application before the Chief Metropolitan Magistrate, Esplanade, Mumbai for physical possession of Shaila Clubs' property at Bandra. The learned Magistrate allowed the application filed by the Bank and authorised recovery officer to take possession of Shaila Clubs' property at Bandra vide Order dated 22 October 2018. Savannah, who

initially filed Writ Petition No. 14517 of 2018 in this Court for stalling recovery of Shaila Clubs' property, later filed application before the learned Magistrate seeking recall of Order dated 22 October 2018. After its recall application was rejected by the learned Magistrate by order dated 19 June 2019, Savannah filed Writ Petition No.7542 of 2019 in this Court and deposited amount of Rs.2,00,00,000/- with the Liquidator. Earlier Savannah had deposited amount of Rs. 50,00,000/- in Writ Petition No.14517 of 2018. This is how Savannah deposited total amount of Rs.2.50 crores with the Liquidator for the purpose of protecting its possession of Shaila Clubs' property.

28) As observed above, Savannah is not the owner of Shaila Clubs' property but was armed with merely a Conducting Agreement executed in its favour by Shaila Clubs and had right to manage Shaila Clubs' property for 15 years upto November 2022. For protecting property of the Club under its management, Savannah paid amount of Rs. 2.50 Crores to the Liquidator, which was actually supposed to be paid by Shaila Clubs. Savannah succeeded in Writ Petition No.7542 of 2019 and proceedings were remanded before the learned Magistrate for being decided afresh. The learned Magistrate however, refused to recall earlier order dated 22 October 2018 by its order dated 4 March 2020. The order dated 4 March 2020 was the subject matter of challenge in Writ Petition No.11610 of 2022.

29) Thus, what Savannah challenged before this Court in Writ Petition No.11610 of 2022 was the correctness of order passed by the learned Magistrate on 4 March 2020 refusing to recall the order dated 22 October 2018. If Writ Petition No.11610 of 2022 was to be dismissed, Savannah would have lost possession of Shaila Clubs' property and Liquidator would have recovered the possession and sold

the Clubs' Property for recovery of outstanding loan amount. During pendency of Writ Petition No.11610 of 2022, the Government of Maharashtra issued GR dated 6 June 2022 sanctioning OTS loan repayment scheme for urban co-operative banks. The Liquidator, who was attempting to recover the unrealised assets of the Bank for over 13 years, made an offer to Savannah on 6 August 2022, which reads thus:

जावक क्र.: जा.क्र. व्हीएसएसबी/वसुली विभाग/२०२२-२३/५८/१९३

प्रति, दिनांक :०६/०८/२०२२
मा. मॅनेजिंग डायरेक्टर,
मे. सावनाह लाईफस्टाईल प्रा.लि.,
हिल रोड, बांद्रा (पश्चिम),
मुंबई – ४०० ०५०

विषय :- एकरक्कमी कर्ज परतफेडीबाबत...

उपरोक्त विषयास अनुसरून आपणास कळविण्यात येते की, आमचे बँकेने शाखा ना. म. जोशी मार्ग, मुंबई येथून कर्जदार मे. शैला क्लब् अँड रिसॉर्ट प्रा.लि. यांना व्यवसायासाठी तारणी मध्यम मुदत कर्ज रक्कम रू.४,७५,००,०००/- इतके अदा केलेले आहे. बँकेने सदर फर्म कडून वसुली दाखल्यानुसार कर्ज वसुलीचे काम करीत असताना मे. शैला बलब अँड रिसॉर्ट प्रा.लि. हे हॉटेल आपण चालविण्यास घेतले आहे असे समजुन आले. त्यापुढेही बँकेने वसुलीची कारवाई चालू ठेवलेली होती.

मे. शैला क्लब अँड रिसॉर्ट प्रा.लि. यांना बँकेने हॉटेल जप्ती करणार असलेची नोटीस दिली. त्यानंतर सदरचे हॉटेल आपण चालवत असलेने मे. शैला क्लब अँड रिसॉर्ट प्रा.लि. आणि बँकेस या दाव्यात पार्टी करून मे. हाय कोर्ट मुंबई येथे आपण दावा दाखल केलेला आहे. या दाव्यातील निकालाप्रमाणे आपण वेळोवेळी मे. शैला क्लब अँड रिसॉर्ट प्रा.लि यांचे बँकेच्या कर्जखातेवर जवळपास रू.२.५० कोटी इतकी रक्कम जमा केलेली आहे.

बँकेस मा. सहकार आयुक्त व निबंधकसो, सहकारी संस्था, महाराष्ट्र राज्य, पुणे यांचे कार्यालयाकडील दि.२८/०७/२०२२ रोजीचे एकरक्कमी कर्ज परतफेड योजना लागू झालेली आहे. त्याप्रमाणे होणारी रक्कम रू.७७,१६.३५०/-(अक्षरी रू. सत्याहत्तर लक्ष सोळा हजार तिनशे पन्नास मात्र) इतकी रक्कम बँकेच्या मे. शैला क्लब अँड रिसॉर्ट प्रा.लि यांच्या कर्ज खाती कर्जदाराच्या वतीने रक्कम जमा करू शकता. बँक अवसायनात जावून १३ वर्षे पुर्ण झालेली आहेत. ठेवीदारांची ठेव रक्कम लवकरात लवकर परत करणे आवश्यक आहे. त्यामुळे आपण कर्जदाराच्या वतीने रक्कम जमा करून कर्जखाते निरंक करावे.

टिप :- यापुर्वी आपण कोर्ट आदेशाप्रमाणे कर्जखातेवर रक्कम जमा केली असलेने आपणास विनंती बजा हे पत्र देणेत येत आहे. सदरचे पत्र कायदेशीर स्वरूपाचे समजण्यात येऊ नये.

सौ. स्मृती पाटील
अवसायक
वसंतदादा शेतकरी सहकारी बँक लि., सांगली

The English translation of letter dated 6 August 2022 is produced by the Applicant as under:

Outward No. VSSB/Recovery Department/2022-23/58/58/193
Date: 06.08.2022

To
The Managing Director,
M/s. Savannah Lifestyle Pvt. Ltd.,
Hill Road, Bandra (West),
Mumbai 400 050.

Subject: Lump sum loan repayment regarding…

In pursuance to the above subject you are being informed that, our Bank, branch N.M. Joshi Marg, Mumbai has paid M/s. Shaila Club & Resort Pvt. Ltd. A medium term loan of Rs. 4,75,00,000/- on hypothecation for business. While the work of recovery of loan from the said firm was being carried out by the bank as per Recovery Certificate, it is come to be known that you have taken the hotel M/s. Shaila Club & Resort Pvt. Ltd. For running it. Even after that the bank had continued the action of recovery.

The bank had given M/s. Shaila Club & Resort Pvt. Ltd. a seizure notice. Thereafter, as the said hotel was being run by you, you have filed a suit in Hon. High Court, Mumbai by making M/s. Shaila Club & Resorts Pvt. Ltd. and the bank as parties in the suit. As per the decree in the suit, you have deposited an approximate amount of Rs. 2.50 crores on the bank loan of M/s. Shaila Club & Resorts Pvt. Ltd.

The lump sum loan repayment has been implemented on the bank on 27.07.2022 by the office of the Co-operative Commissioner and Registrar, Co-operative Societies, Maharashtra State, Pune. According to that the amount of Rs. 77,16,350/- (Rs, seventy seven lakhs sixteen thousand three hundred fifty only) can be deposited on behalf of the borrower in its bank account of M/s. Shaila Club & Resorts Pvt. Ltd. 13 years have completed for the bank going into liquidation. It is necessary to return the amount of depositors as early as possible. Therefore, by depositing the amount on behalf of the borrower, clear the loan account.

PS: As you have earlier deposited the amount on the loan account as per the order of the court, you are being given this request letter. This letter should not be taken as legal in nature.

Sd/-
Mrs. Smruti Patil
Liquidator
Vasantdada Shetkari Sahakari Bank Ltd,
Sangli

30) Savannah expressed willingness to pay amount of Rs.77,16,350/- suggested by the Liquidator but did not agree for closure of the loan account. Savannah instead requested the Bank to assign loan with all securities, rights and benefits to it. The counter offer made by Savannah reads thus:

Date: 11/08/2022

To.
The Official Liquidator
Vasantdada Shetkari Sahakari Bank,
Sangli Miraj Road,
Sangli-416 416
Email: vssbsangli@gmail.com

Kind Attn: Ms. Smruti Patil (Liquidator)

Dear Madam,

Sub.: Reply to your letter dated 6th August 2022 addressed to Savannah Lifestyle Private Limited.

We are in receipt of your letter dated 6th August 2022 ("the said Letter") with regards to lumpsum repayment of the loan of Shaila Clubs and Resorts Private Limited:

1. Vide your letter dated 6th August 2022 ("the said Letter") you have informed us that pursuant to the scheme of lumpsum repayment of loan, an amount of INR 77,16,350/- (Rupees Seventy-Seven Lakhs Sixteen Thousand Three Hundred and Fifty Only) can be paid towards the outstanding loan amount payable by Shaila Clubs and Resorts Private Limited to close the loan account of Shaila Clubs and Resorts Private Limited.

2. Since we are in possession of the club premises and are conducting our business from there, you have offered to us to make the payment of INR 77,16,350/- (Rupees Seventy-Seven Lakhs Sixteen Thousand Three Hundred and Fifty Only) towards the outstanding loan account of Shaila Clubs and Resorts Private Limited. You have also confirmed to us that the amount of INR 2 Crores 50 Lakhs paid/ deposited by Savannah Lifestyle Private Limited pursuant to Writ Petition Nos. 14517 of 2018 and 7542 of 2019 have been adjusted by your Bank in the loan account of Shaila Clubs and Resorts Private Limited.

3. You have further informed us that Vasantdada Shetkari Sahakari Bank Limited has been in liquidation for more than 13 years now and therefore it has become necessary to make payments to the cred-

itors of the Bank, hence the offer from you to us to make the payment of the said amount.

4. We wish to hereby convey our acceptance of the offer made by you vide the said letter and are willing to make payment of the said amount of INR 77,16.350/- (Rupees Seventy-Seven Lakhs Sixteen Thousand Three Hundred and Fifty Only) either directly through us or through any third party. We however request you not to close the loan account of Shaila Clubs and Resorts Private Limited but assign the loan along with all security, rights and benefits to Savannah Lifestyle Private Limited or to such third party who makes payment to you and subrogate Savannah Lifestyle or such third party in place and stead of the bank along with all security held and rights in relation to the said loan account including but not limited to the charge on the club premises and other assets of Shaila Clubs.

5. Since Shaila Clubs and Resorts Private Limited is unable to repay the amount due to your Bank, a Recovery Certificate came to be issued on 23rd February 2012 by the Deputy Registrar, Co-operative Societies, State of Maharashtra, against Shaila Clubs and Resorts Private Limited for an amount of INR 5,11,51,489 (Indian Rupees Five Crores Eleven Lakhs Fifty-One Thousand Four Hundred Eighty-Nine) under which your Bank was entitled to execute the Recovery Certificate and recover its outstanding dues from Shaila Clubs and Resorts Private Limited. We request you to kindly cooperate in executing necessary documents or making an application to the relevant authorities for transfer of the said Recovery Certificate in favour of Savannah Lifestyle or the said third party along with the charge on the club premises.

6. We can also file Consent Terms in Writ Petition No. 5289 of 2020 which has been filed by Savannah Lifestyle Private Limited, before the Hon'ble Bombay High Court.

7. Awaiting your confirmation of the aforesaid, we shall proceed with depositing the said amount with your Bank by way of Demand Draft as per the offer made by your Bank vide letter dated 06/08/2022 in the said letter.

Sincerely,
Savannah Lifestyle Private Limited
Managing Director

31) It appears that the Liquidator of the Bank accepted the counter offer made by Savannah and this is how the Minutes of Order dated 20 October 2022 were drafted and signed by the Liquidator and Savannah. Under the Minutes of Order, Savannah paid slightly higher

amount of Rs.87,92,000/- to the Bank. As observed above, Savannah had already paid amount of Rs.2.50 crores in the loan account of Shaila Clubs. This is how total amount paid by Savannah in the loan account of Shaila Clubs became Rs.3,37,92,000/-. Upon receipt of the said amount, the Bank assigned the loan account of Shaila Clubs alongwith all rights, securities, mortgages, charges, remedies and benefits attached thereto as a secured loan in favour of Savannah. Savannah sought liberty to adjust its equities *qua* the sum paid to the Bank against Shaila Clubs and their other creditors in pending litigations or otherwise. Savannah was granted liberty to do so in accordance with law. This Court took on record the Minutes of Order dated 20 October 2022 and disposed of Writ Petition No. 11610 of 2022 in terms of thereof.

32) Mr. Amit Prabhakar Kore (now a suspended director of Shaila Clubs) raised objection to the said Minutes of Order vide letter dated 17 November 2022 which reads thus:

17th November 2022

To,
Liquidator
Vasantdada Shetkari Sahakari Bank Ltd. ("the Bank")
Sangli, Maharashtra

Dear Madam,

Sub : One Time Settlement (OTS) of Shaila Clubs and Resorts Pvt. Ltd.

Re : Intervention Application in NCLAT CA AT Insolvency No. 1042 of 2021 dated 16.11.2021

1. As you are aware, the erstwhile Directors of Shaila Clubs and Resorts Pvt. Ltd. (the Corporate Debtor in the captioned Intervention Application) (hereinafter, "Shaila Clubs") have challenged the Order dated 29th October, 2021 passed by the Hon'ble NCLT, admitting the company into the CIRP

process; by way of an appeal before the Hon'ble NCLAT (being Company Appeal No. (AT) (Insolvency) No. 1042/2021) ("the NCLAT Appeal").

2. Your Intervention Application in the NCLAT Appeal dated 16.11.2021 was served on us yesterday, and we were shocked to find out that the OTS of Shaila Clubs has been completed without even informing the promoters / erstwhile directors of Shaila Clubs. Please do note that you are mandated to make the Corporate Debtor, i.e. Shaila Clubs, a party to any such OTS particularly given that Shaila Clubs is the "*Borrower*" under the loan documents and the erstwhile directors who are the Guarantor/s of the loan availed from Bank. It has now been brought to our notice, vide the captioned Intervention Application, that the OTS has been concluded with Savannah Lifestyle Private Limited ("**Savannah Lifestyle**"), a third party who has absolutely nothing to do with the loan availed of by Shaila Clubs. As you are well aware, the Company, i.e. Shaila Clubs, despite being a necessary party, was not even a party to the proceedings in the Bombay High Court.

3. In fact, it is due to Savanna Lifestyle defaulting on its obligations under its Conducting Agreement with Shaila Clubs, and their illegal occupation of the Shaila Clubs' property, that Shaila Clubs' account has become an NPA. You are well aware of the aforesaid, given the fact that Shaila Clubs, as well as the Bank, have had several litigations with Savannah Lifestyle over the past 15 years and against whom there is an FIR registered for forgery of a document for gaining illegal admission into the Committee of Creditors.

4. Given the above, the erstwhile Directors of Shaila Clubs have been constrained to take several steps in law in order to protect illegal occupation of the property as well as the other Financial Creditors, including the Bank, from the fraudulent claims of Savannah Lifestyle. In such circumstances, it is baffling to note that your good office has proceeded to engage with Savannah Lifestyle and agreed to an OTS with Savannah Lifestyle, by intentionally excluding Shaila Clubs. The ulterior motives of all concerned and the *male fide* acts/omissions of the parties to this scheme are very evident, and not far to seek.

5. In view of the aforesaid, we hereby call upon you to refrain from taking the following steps –

a. exchanging communication with any other outside / third party, other than the Resolution Professional (RP) or the erstwhile Directors of the Corporate Debtor /guarantors of the Bank, for the limits sanctioned to Shaila Clubs with regard to the OTS at your Bank. Further, and in any event, to keep the RP and the undersigned and the other erstwhile Directors copied on all communications.

b. releasing any of the original property papers (Original Deed of conveyance de 27th day of May 2005 is in custody of the Bank) or selling any of the properties to any third party until the matter is decided by the Hon'ble NCLT/NCLAT.

c. subrogating the rights of the Bank to any other party either in the COC or over the property,

d. calling any further meetings of the CoC and/or pass any resolutions in relation to the CIRP process until the matter is decided by the Hon'ble NCLT/NCLAT.

6. Request you to submit a copy of all correspondence, submissions to Savannah, the Hon'ble High Court of Maharashtra, Hon'ble NCLT, Hon'ble NCLAT or any other legal authority for us take the appropriate legal remedies.

7. In the event you fail to comply with the aforesaid, the erstwhile Directors of the Corporate Debtor shall be constrained to initiate appropriate legal proceedings as advised, entirely at your risk as to the costs and consequences thereof, which please do note. Needless to state, the above communication is without prejudice to our rights under law and / or otherwise. We hereby reserve our rights to take appropriate steps to remedy the situation and the prejudice caused to Shaila Clubs.

Yours Truly,

Amit Kore
Erstwhile Director of Shaila Clubs and Resorts Private Limited

33) On account of raising of objection by Shaila Clubs, the Liquidator of the Bank decided to resile from the compromise executed with Savannah and sent letter dated 18 November 2022 to the Managing Director of Savannah which reads thus:

जावक क्र. : जा.क्र.व्हीएसएसबी/वसुली विभाग/२०२२-२३/५८/१८२ दिनांक : १८/११/२०२२

प्रति,
मा. मॅनेजिंग डायरेक्टर,
ने. सावनाह लाईफस्टाईल प्रा.लि..
१६४ हिल रोड, बांद्रा (पश्चिम),
मुंबई – ४०० ०५०

विषय :- बँकेचे कर्जदार मे. शैला क्लब प्रा.लि. यांचे खातेवर आपले मार्फत OTS ची भरणा झालेली रक्कम परत केलेबाबत....
संदर्भ :- मे, शैला क्लब अँड रिसॉर्टस् प्रा.लि. संचालक अमित प्रभाकर कोरे यांचा दि.१७/११/२०२२ रोजीचा हरकत अर्ज.

वरील संदर्भीय विषयास अनुसरून आपणास कळविण्यात येते की, आपण वर नमुद केलेल्या कर्जखातेसाठी OTS प्रमाणे होणारी र.रू.७७,१६.३५०/- डी.डी.नं.९२०८६१ नं व र.रू.१०,७५,०००/- डी.डी.नं.९२०८६४ व .रू.६५०/- RTGS ने जमा केलेल्या होत्या.

परंतु, मे.शैला क्लब अँड रिसॉर्टस् प्रा.लि. हे बँकेकडील मुळ कर्ज खाते आहे व त्याचे संचालक अमित प्रभाकर कोरे यांनी दि.१७/११/२०२२ रोजी बँकेकडे सदर कर्जखातेबाबत हरकत नोदविली आहे. श्री. अमित कोरे यांनी घेतलेल्या आक्षेपामुळे आपणास सदर कर्जाचे बँकेने मंजूर केलेल्या एक रक्कमी कर्ज परतफेड योजनेत आपण अपात्र ठरत आहात.

सदरची रक्कम न्यायालयीन बार्बीमध्ये अडकून राहणेची शक्यता निर्माण झालेने अवसायक या नात्याने महाराष्ट्र सहकारी संख्या अधिनियम १९६० मधील कलम १०५ व १०७ व अवसायकास प्राप्त असलेल्या अधिकारान्चये आपणास दिलेली OTS योजना दि.१८/११/२०२२ रोजीचे बँकेकडील ठराव क्र. २ ने रद्द करणेत येत आहे. त्यामुळे आपण भरलेली ने. शैला क्लब अँड रिसॉर्टस् प्रा.लि. यांचे कर्जासाठीची OTS ची रक्कम बैंक आपले कंपनीचे नांवाने स्टेट बैंक ऑफ इंडीया, मुंबई वरील DD No.119938 र.रू.७७.१६.३५०/- ने व DD No.119937 ८.रू.१०,७५,०००/- व DD No.119936 रू.६५०/- अशी एकूण र.रू.८७,९२,०००/- (अक्षरी र.रू. सत्याऐंशी लक्ष ब्यान्नऊ हजार मात्र) इतकी आपणास परत करण्यात येत आहे.

तरी सदर DD आपणास मिळाल्याची पोहोच देण्यात यावी.

सौ. स्मृती पोटील

अवसायक

वसंतदादा शेतकरी सहकारी बैंक लि., सांगली

34) It is an admitted position that Savannah refused to accept the Demand Drafts sought to be handed over to it by the Liquidator alongwith letter dated 18 November 2022. The Liquidator thereafter filed Affidavit dated 21 November 2022 in Writ Petition No.11610 of 2022, which was already disposed of, which reads thus:-

AFFIDAVIT OF THE RESPONDENT No. 1 & 2

I, Mrs. Smruti Narenra Patil, Age ____ years, the Liquidator of the Respondent No. 1 herein do hereby state on solemn affirmation as follows.

1. The Respondent No. 3 is the borrower of the Respondent No. 1 Bank (Now under liquidation). I say that the Petitioner claims to be the lessee/licensee of the Respondent No.3 and in occupation of the disputed property as such (which assertion the Respondent No. 1 & 2 do not admit as correct)

2. I say that the State Government has floated a “One Time Settlement” Scheme for borrowers of various Institutions, which is applied to the Respondent No. 1 Bank in liquidation

3. The Respondent No. 1 accordingly offered to the Respondent No. 3, who is the borrower of the Respondent No. 1, the benefit of the said Scheme. The Respondent No. 1 also offered to the Petitioner the

benefit of the said Scheme , being the occupant the disputed premises which are mortgaged to Respondent No.1

4. The Petitioner came forward and accepted the terms of the said OTS Scheme and offered to pay a sum of Rs. 87,92,000/- for the settlement of the loan account of the Respondent No. 3. The Respondent No. 1 accepted the said offer of the Petitioner and entered consent terms, based thereon, in the present Writ Petition. I crave leave to refer to and rely upon the correct copy of the said consent terms and the order of this Hon'ble Court dated 21 of October 2022 as and when necessary.

5. I say that after the disposal of the present Writ Petition as aforesaid, the Respondent No. 3 has objected to the acceptance of the offer of the Petitioner to settle its loan account by letter dated 17 of November 2022. Hereto annexed and marked as Annexure A – 1 is the copy of the said letter dated 17 of November 2022.

6. After examination of the objections/letter dated 17 of November 2022, issued by the Respondent No. 3, the provisions of the law and after examining the file in that context, I have come to a conclusion that the decision to offer the benefit of the OTS Scheme to the Petitioner was itself incorrect and thus the decision to enter consent terms as aforesaid was also incorrect.

7. I say that I have decided to recall the benefits of the OTS Scheme to the Petitioner as aforesaid by Resolution No. 2 of meeting dated 18 of November 2022.

8. I say that the I have informed the Petitioner about the decision as aforesaid by letter dated 18th of November 2022. The Demand Drafts of the amount of Rs. 87,92,000/- are also enclosed with the said letter and the amount is paid over to the Petitioner. Hereto annexed and marked as Annexure A-2 is the copy of the letter dated 18th of November 2022 alongwith the copy of the demand drafts.

9. I say that since the order dated 21 of October 2022 is passed by this Hon'ble Court on the basis of the arrangement as aforesaid, which now stands altered, the Respondent No. 1 & 2 are humbly submitting the said subsequent events on the record of this Hon'ble Court, as duty bound.

Solemnly affirmed at Mumbai,
Dated this 21st day of November 2022. Deponent.
BEFORE ME.

Identified by me

35) Coming back to the issue of legality of compromise, the Bank has contended that the compromise entered into with Savannah vide Minutes of Order dated 20 October 2022 is unlawful. Same stand is adopted by the suspended director of Shaila Clubs. Here provisions of Order XXIII Rule 3 of the Code would be relevant, which provides thus:

> **3. Compromise of suit.**
> Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff In respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit]:
>
> Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.
>
> Explanation. An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.

36) Thus, the Court is required to record a satisfaction that the Suit has been adjusted by a lawful agreement or compromise in writing and signed by the parties. Thus, for compromise of a suit under provisions of Order XXIII Rule 3 of the Code, the agreement or compromise must be lawful. It is Bank's contention that the transaction of assignment of Shaila Clubs' loan to Savannah is unlawful and is prohibited by the RBI Directives.

37) Sections 21 of the Banking Regulation Act, 1949 **(Act of 1949)** confers power on the Reserve Bank of India to control advances by the banking companies and provides thus:

21. Power of Reserve Bank to control advances by banking companies.-
(1) Where the Reserve Bank is satisfied that it is necessary or expedient in the public interest [or in the interests of depositors] [or banking policy] so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular, and when the policy has been so determined, all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined.

(2) Without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1), the Reserve Bank may give directions to banking companies, either generally or to any banking company or group of banking companies in particular, [3][as to-

(a) The purposes for which advances may or may not be made,
(b) The margins to be maintained in respect of secured advances,
(c) the maximum amount of advances or other financial accommodation which, having regard to the paid-up capital, reserves and deposits of a banking company and other relevant considerations, may be made by that banking company to any one company, firm, association of persons or individual,
(d) The maximum amount up to which, having regard to the considerations referred to in clause (c), guarantees may be given by a banking company on behalf of any one company, firm, association of persons or individual, and
(e) the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given].

(3) Every banking company shall be bound to comply with any directions given to it under this section.

38) Thus, under Section 21 of the Act of 1949, RBI is empowered to give directions to the banking companies, which becomes binding under provisions of sub-section (3) of Section 21 on every banking company.

39) Under provisions of Section 35A, RBI has power to issue directions to a banking company and provides thus :-

35-A. Power of the Reserve Bank to give directions. –
(1) Where the Reserve Bank is satisfied that-
(a) in the [public interest]; or

(aa) in the interest of banking policy; or

(b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or

(c) to secure the proper management of any banking company generally,

it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

(2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.

40) In exercise of powers under Sections 21 and 35A of the Act of 1949, RBI issued 'Master Directions–Reserve Bank of India (Transfer of Loan Exposure) Directions, 2021' on 24 September 2021. Under Clause 3 of the Directives, the same applies to various entities enumerated therein, which are collectively referred to as 'lenders' throughout the Directives. Clause 3 of the Directives provides thus:

3. The provisions of these directions shall apply to the following entities (collectively referred to as lenders in these directions), unless specified otherwise:

(a) Scheduled Commercial Banks;
(b) Regional Rural Banks;
(c) Primary (Urban) Co-operative Banks/State Co-operative Banks/ Central Co-operative Banks;
(d) All India Financial Institutions (NABARD, NHB, EXIM Bank, SIDBI and NaBFID);
(e) Small Finance Banks; and
(f) All Non Banking Finance Companies (NBFCs) including Housing Finance Companies (HFCs).

41) Clause 9 of the Directives define various terms and expressions and the term 'permitted transferees' has been defined under Clause 9(h) as under:

> (h) "Permitted transferees" mean the lenders specified at sub-clauses (a), (d), (e) and (f) of Clause 3:

42) The term 'transfer' and 'transferee' are defined under Clauses 9(l) and 9(m) as under:

> (l) "transfer" means a transfer of economic interest in loan exposures by the transferor to the transferee(s), with or without the transfer of the underlying loan contract, in the manner permitted in these directions;
> Explanation: Consequently, the transferee(s) shall "acquire" the loan exposures following a loan transfer.
>
> (m) transferee" means the entity to which the economic interest in a loan exposure is transferred under these directions;
>
> Provided that a transferee shall not be a person disqualified in terms of Section 29A of the Insolvency and Bankruptcy Code, 2016;
>
> Provided further that in case of transfer of loan exposures of borrowers in whose accounts instances of fraud have been detected by any lender, the transferee(s) shall neither belong to the existing promoter group of such borrower nor shall be a subsidiary / associate / related party etc. (domestic as well as overseas) of any person belonging to the existing promoter group of such borrower.
>
> Explanation I: In market parlance, transferee may be alternatively referred to as the assignee under assignment transactions and participant under loan participations, wherever applicable.
>
> Explanation II: For the purpose of the second proviso above, the term 'promoter group' shall have the same meaning as in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018; and the term 'related party' shall have the same meaning as in the Insolvency and Bankruptcy Code, 2016.
>
> Explanation III: The responsibility for verifying and establishing that the transferee(s) comply with the above provisos shall be with the transferor(s).

43) Under Clause 54 of the Directives, the transfer of stressed loans is permitted only to the permitted transferees and asset reconstruction companies. Clause 54 reads thus:

> 54. In general, lenders shall transfer stressed loans, including through bilateral sales, only to permitted transferees and ARCs

44) Thus, under the 2021 Directives issued by the RBI, the lenders enumerated in Clause 3 thereof can transfer the stressed assets only to the lenders specified under sub-clauses (a), (d), (e) and (f) of Clause 3, which includes Scheduled Commercial Banks, Financial Institutions, Small Finance Banks and NBFCs.

45) The term "stressed asset" is defined under Clause 9 (k) as under:

> (k) "stressed loans" mean loan exposures that are classified as non-performing assets (NPA) or as special mention accounts (SMA);

46) Thus, under the Directives 2021 issued by the RBI, it was impermissible for the Applicant-Bank to transfer the loan of Shaila Clubs to any entity other than the ones enumerated in sub-clauses (a), (d), (e) and (f) of Clause 3. This is the reason why the Applicant-Bank as well as Shaila Clubs contend that the compromise entered into between the Bank and the Savannah is in violation of the RBI Directives and the same is therefore unlawful.

47) Dr. Tulzapurkar has fairly not disputed the position that the 2021 Directives are applicable in respect of the Applicant-Bank and that Savannah is not included as a recognized 'lender' under Clause 3 of the Directives. Dr. Tulzapurkar has also fairly not disputed the position that the RBI Directives issued under provisions of Sections 21 and 35A of the Act of 1949 are binding and therefore, it is not necessary to increase the length of this judgment by discussing the ratio of judgment in ***Sudhir Shantilal Mehta*** (supra) which reiterates the position that RBI Directives are binding. His case is that the RBI Directives have no application in the present case.

48) Savannah's contention is that the transaction involved in the present case is not governed by 2021 Directives issued by RBI. It is sought to be suggested that the Directives apply only to 'stressed assets' and that the same did not impinge upon Liquidator's right of realizing monies in respect of assets of a borrower. True it is that the 2021 Directives essentially apply to 'stressed loans' as defined under Clause 9 (k) of the Directives, which includes loan exposure that are classified as Non-Performing Assets or Special Mention Accounts. However, Applicant-Bank has pleaded in paragraph 12 of the Application that Shaila Clubs account was classified as NPA and this assertion is not denied by Savannah in its Affidavit-in-Reply. In fact, contents of paragraph No.12 are admitted by Savannah. Therefore, the contention that RBI Directives 2021 do not apply to the loan transactions of Shaila Clubs is stated only to be rejected.

49) Reliance is also placed on behalf of Savannah on Clause 11 of the Directives, which reads thus:

> 11. Loan transfers should result in transfer of economic interest without being accompanied by any change in underlying terms and conditions of the loan contract usually. In all cases, if there are any modifications to terms and conditions of the loan contract during and after transfer (eg. In take-out financing), the same shall be evaluated against the definition of 'restructuring' provided in Paragraph 1 of the Annex to the Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions 2019, dated June 7, 2019.

50) I fail to understand as to how reliance on Clause 11 of the RBI directives assists the case of Savannah. All that Clause 11 provides is that loan transfer would result in transfer of economic interest without being accompanied by any change in underlying terms and conditions of the loan contract and in all cases where there are any modifications in the terms and conditions of the loan contract

during or after transfer, the same shall be evaluated against the definition of the term "restructuring" provided in Paragraph No.1 of the Annexure to Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions, 2019 dated 7 June 2019. Dr. Tulzapurkar has placed on record copy of the said Prudential Directions, 2019 which again does not assist the case of Savannah in any manner. All that Clause 11 provides is that there would be no change in the terms and conditions of loan contract upon transfer of loan and whenever such terms or conditions are modified, the same shall be evaluated against definition of the term 'restructuring' in Prudential Directions. Thus, Prudential Directions apply for limited purpose of definition of the term 'restructuring' that too when there are modification of terms and conditions in loan agreement.

51) I am therefore of the view that the transaction of assignment of loan of Shaila Clubs by the Bank in favour of Savannah is specifically prohibited under the 2021 RBI Directives as Savannah is not an eligible transferee. One of the objectives behind the RBI Directives is to ensure that the Banks do not transfer loan accounts to ineligible transferees. Otherwise, Banks would transfer loan accounts to private money lenders. Since Savannah is not one of the recognized transferees under the 2021 RBI guidelines, transfer of loan account of Shaila Clubs in favour of Savannah would clearly be unlawful. Therefore, the compromise entered into between the Bank and Savannah is something which this Court could not have accepted for the purpose of disposal of Writ Petition No.11610 of 2022

52) More glaring is the fact that the compromise executed between the Bank and Savannah affects the interests of Shaila Clubs, which is not signatory to the Minutes of Order. The effect of Minutes

of Order is that upon a payment of amount of Rs.3.37 crores in the loan account of Shaila Clubs, Savannah has secured right to recover outstanding loan amount of Rs.8,97,73,093/- (as on 20 October 2022) from Shaila Clubs. As observed above, Savannah is possessing a valuable asset of Shaila Clubs being Club premises at Bandra in Mumbai. By transfer of loan, it became mortgagee of the Club's property. On the basis of assignment of loan of Shaila Clubs in its favour, Savannah has instituted CIRP against Shaila Clubs and would ultimately realise the outstanding loan amount alienating the property of Shaila Clubs. Thus, the Minutes of Order directly affect the rights of Shaila Clubs. The objective behind RBI Directives of not permitting ineligible lender to purchase NPA is totally frustrated in the present case, where Savannah is actually eyeing to secure ownership of property under its management as mere Conductor by paying sum of Rs.3.37 crores in Shaila Clubs' loan account. The compromise effected between Bank and Savannah actually affects the interest of Shaila Clubs, who is not the signatory to the compromise. Mere presence of Advocate of Shaila Clubs before the Court on 21 October 2022 or failure on the part of the Advocate to raise any objection to disposal of the petition in view of the Minutes of Order would not convert unlawful compromise into lawful one.

53) Judgment of the Apex Court in ***Suleman Noormohamed*** (supra) is relied upon by Mr. Seervai in support of his contention of unlawful compromise. The Apex Court has dealt with the issue of eviction for the tenant on the basis of compromise where the tenant opposed execution of the decree on the ground that the decree was nullity as the compromise, in absence of making out the ground for eviction under rent control legislation, was itself unlawful. The Apex Court held in paragraphs No. 8 as under:

2. It is not necessary to review again and again all the earlier judgments of this Court on the point. It will be sufficient to refer only to two, namely, Nagindas Ramdas v. Dalpatram Ichharam alias Brijram [(1974) 1 SCC 242 : (1974) 2 SCR 544] — a judgment which is noticed by the High Court also in its order under appeal and the case of Roshan Lal v. Madan Lal [(1975) 2 SCC 785 : (1976) 1 SCR 878] .

3. It was pointed out in Nagindas case by one of us (Sarkaria, J.) that the **existence of one of the statutory grounds mentioned in Sections 12 and 13 of the Act, as in the case of other similar States Statutes, is a sine qua non to the exercise of jurisdiction by the Rent Court in order to enable it to make a decree for eviction. Parties by their consent cannot confer jurisdiction on the Rent Court to do something which according to the legislative mandate it could not do. The Court while recording a compromise under Order 23 Rule 3 of the Code has to satisfy itself that the agreement between the parties is lawful; in other words is not contrary to the provisions of the Act.** But it has been clearly laid down in Nagindas case at p. 552 (SCC p. 251-52):

"… that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction, though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself…"

4. In Roshan Lal case, one of us (Untwalia, J.) following Nagindas case reiterated the same view. At p. 882 delivering the judgment of this Court, it has been said: (SCC p. 789)

> "The Court can pass a decree on the basis of the compromise. In such a situation the only thing to be seen is whether the compromise is in violation of the requirement of the law. In other words, parties cannot be permitted to have a tenant's eviction merely by agreement without anything more. The compromise must indicate either on its face or in the background of other materials in the case that the tenant expressly or impliedly is agreeing to suffer a decree for eviction because the landlord, in the circumstances, is entitled to have such a decree under the law."

With reference to the requirement of the law under Order 23 Rule 3 of the Code, it has been observed further on the same page: (SCC p. 789)

> "If the agreement or compromise for the eviction of the tenant is found, on the facts of a particular case, to be in violation of a particular Rent Restriction or Control Act, the Court would refuse to record the compromise as it will not be a lawful agreement. If on the other hand, the Court is satisfied on consideration of the terms of the compromise and, if necessary, by considering them in the context of the pleadings and other materials in the case, that the agreement is lawful, as in any other suit, so in an eviction suit, the Court is bound to record the compromise and pass a decree in accordance therewith. Passing a decree for eviction on adjudication of the

requisite facts or on their admission in a compromise, either express or implied, is not different."

(emphasis added)

54) The Apex Court has adversely commented upon practice followed in this Court disposing of matters by accepting the Minutes of Order. In ***Ajay Ishwar Ghute*** (supra), the Court referred to its judgment in ***Speed Ways Picture Pvt. Ltd. v. Union of India*** (1996) 6 SCC 705 and held in paragraph Nos.16 to 20 as under:

> **16.** Now, we deal with the concept of "Minutes of Order", which is peculiar only to the Bombay High Court. This Court, in the case of *Speed Ways Picture Pvt. Ltd.* v. *Union of India*[1] had an occasion to consider the practice of passing orders in terms of "Minutes of Order". Paragraphs 5 and 6 of the said decision reads thus:
>
> > **"5.** The basis upon which the review petition was decided is, in our view, not correct. Counsel for the appellants and the respondents put it in writing that a judgment of this Court and a Full Bench judgment of the High Court covered the matter. The writ petition in that High Court could, therefore, not succeed. This could have been orally stated and recorded by the Court. **As a courtesy to the Court, the practice of long standing is to put statements such as these in writing in the form of "minutes of order" which are tendered and on the basis of which the Court passes the order: "Order in terms of minutes". The signatures of counsel upon "minutes of order" are intended for identification so as to make the order binding upon the parties' counsel represented. An order in terms of minutes is an order in invitum, not a consent order. It is appealable and may be reviewed.**
> >
> > 6. It would be a different matter if the order of the court was passed on "Consent Terms", i.e., on a statement above the signatures of counsel which expressly stated it was "by consent". The order of the court in such event would read: "Order in terms of consent terms."
> >
> > **(emphasis added)**
>
> **17.** As the order passed in terms of the "Minutes of Order" is an order in invitum, when a document styled as "Minutes of Order" signed by the advocates for the parties is tendered on record, the Court must first examine whether it will be lawful to pass an order in terms of the "Minutes of Order". The Court must consider whether all necessary parties have been impleaded to the proceedings in which the "Minutes of Order" have been filed. The Court must consider whether third parties will be affected by the order sought in terms of the "Minutes of Order". If the Court is of the view that necessary parties were not impleaded, the Court ought to allow the petitioner to implead them. On the failure of the petitioner to implead them, the Court must decline to pass an order of disposing of the petition in

terms of the "Minutes of Order". The reason is that an order of the Court passed without hearing the necessary parties would be illegal. The Court must remember that though the parties may say that they have agreed to what is recorded in the "Minutes of Order", the order passed by the Court based on the "Minutes of Order" is not a consent order. It is an order in invitum. Only if the Court is satisfied that an order in terms of the "Minutes of the Order" would be legal, the Court can pass an order in terms of the "Minutes of Order". While passing an order in terms of the "Minutes of Order", the Court must record brief reasons indicating the application of mind.

18. For the convenience of the Court and as a matter of courtesy, the advocates draft "Minutes of Order" containing what could be incorporated by the Court in its order. Perhaps this practice was evolved to save the time of the Court. The advocates who sign and tender the "Minutes of Order" have greater responsibility. Before they sign the "Minutes of the order", the advocates have an important duty to perform as officers of the Court to consider whether the order they were proposing will be lawful. They cannot mechanically sign the same. After all, they are the officers of the Court first and the mouthpieces of their respective clients after that.

19. Even if parties file consent terms, while accepting the consent terms in terms of Rule 3 of Order XXIII of the Civil Procedure Code, 1908, the Court is duty-bound to look into the legality of the compromise. The Court has the jurisdiction to decline to pass a consent order if the same is tainted with illegality. However, an order passed by the Court in terms of compromise recorded in the consent terms is a consent order which will not bind the persons who were not parties to the consent terms unless they were claiming through any of the parties to the consent terms.

20. We summarise our conclusions regarding the concept of the "Minutes of Order" as follows:

a) The practice of filing "Minutes of Order" prevails in the Bombay High Court. As a courtesy to the Court, the advocates appearing for the parties to the proceedings tender "Minutes of Order" containing what could be recorded by the Court in its order. The object is to assist the Court;

b) An order passed in terms of the "Minutes of Order" tendered on record by the advocates representing the parties to the proceedings is not a consent order. It is an order in invitum for all purposes;

c) Before tendering the "Minutes of Order" to the Court, the advocates must consider whether an order, if passed by the Court in terms of the "Minutes of Order," would be lawful. After "Minutes of Order" is tendered before the Court, it is the duty of the Court to decide whether an order passed in terms of the "Minutes of Order" would be lawful. The Court must apply its mind whether the parties who are likely to be affected by an order in terms of the "Minutes of Order" have been impleaded to the proceedings;

d) If the Court is of the view that an order made in terms of the "Minutes of Order" tendered by the advocates will not be lawful, the Court should decline to pass an order in terms of the "Minutes of Order"; and

> **e)** If the Court finds that all the parties likely to be affected by an order in terms of the "Minutes of Order" are not parties to the proceedings, the Court will be well advised to defer passing of the order till all the necessary parties are impleaded to the proceedings.
> *(emphasis added)*

55) Thus, Minutes of Order is an order in invitum and as held by the Apex Court, before tendering the Minutes of Order to the Court, the Advocates must consider whether the order, if passed by the Court in terms of such Minutes, would be lawful. The Apex Court has further held that it is duty of the Court to decide whether the order passed in terms of the Minutes of Order would be lawful.

56) In the present case, the Minutes of Order are signed not just by the Advocates but also by the Liquidator and Savannah. In that sense, it actually travels beyond the scope of mere Minutes of Order and partakes character of consent terms between the Bank and Savannah. However irrespective of whether it is to be treated merely as Minutes of Order or whether it is to be construed as consent terms entered between Bank and Savannah, it must pass the muster of being a lawful order or a lawful compromise.

57) I have held above that the arrangement agreed between the Bank and Savannah is not only unlawful and it directly affects the rights of Shaila Clubs and could not have been accepted by this Court for disposing the Writ Petition No.11610 of 2022. What has happened in the present case is that Writ Petition No. 11610 of 2022 filed challenging the order of the learned Magistrate relating to execution of possession warrant in pursuance of recovery certificate has been disposed of by settling the loan account of Shaila Clubs with a third party viz. Savannah. It was therefore otherwise questionable whether the loan account of Shaila Clubs could have been settled in the light of issue involved in the Writ Petition No.11610 of 2022. But in any case,

such settlement of loan account can never be without the consent of Shaila Clubs.

58) It sought to be contended by Dr. Tulzapurkar that as far as the Bank and Savannah are concerned, the compromise is lawful as the Bank itself walked up to Savannah with an offer to settle the loan account of Shaila Clubs under OTS for an amount of Rs.77,16,350/-. It is suggested that so far as the Bank is concerned, the compromise is lawful as the Bank always intended to close Shaila Clubs' loan account upon acceptance of ascertained amount of Rs.77,16,350/- under the OTS. It is contended that the Liquidator had all the powers to ascertain the figure at which Shaila Clubs' loan account could be settled under the OTS and the Bank has taken independent commercial decision of closing the loan account of Shaila Clubs by accepting the amount of Rs.77,16,350/-, in addition to the amount of Rs.2.50 crores already paid into the said loan account. Dr. Tulzapurkar has contended that so far as validity of assignment of loan account from Bank to Savannah is concerned, Shaila Clubs has already raised objection to the validity of such transfer in the CIRP initiated before NCLT and the said issue can be decided in those proceedings. It is sought to be contended that NCLT is competent to decide whether assignment of the loan of Shaila Clubs from the Bank to Savannah is valid or not. Dr. Tulzapurkar has accordingly contended that alleged invalidity of assignment of loan account cannot be a reason for seeking recall/review of order dated 21 October 2022. I am unable to agree with his contentions. The Minutes of Order dated 20 October 2022 has a seal of this Court in the form of order dated 21 October 2022. If the compromise is itself unlawful, the seal of this Court put on such compromise must be removed so that no party is permitted to rely on the same in any collateral proceedings by

contending that that the compromise has been accepted by the High Court and that the same is therefore valid. This is the first reason why the specious plea sought to be adopted by Savannah about part of the compromise dealing with rights of Bank being lawful must be rejected. Secondly and more importantly, the compromise ultimately affects the rights of Shaila Clubs, which has sought review of the order dated 21 October 2022. Therefore, the review petition filed by the Shaila Clubs cannot be dismissed by relegating it to remedy of raising objection in CIRP before NCLT which does not have the jurisdiction to declare that the compromise effected through the Minutes of Order accepted by this Court is unlawful. NCLT would always treat the Minutes of Order, with seal of this Court, to be lawful. It is therefore necessary that the order dated 21 October 2022 is recalled.

59) Savannah has strongly objected to the *locus standi* of the Liquidator to file Interim Application No.13400 of 2024. Reliance is placed on provisions of Section 109 of the M.C.S. Act, under which the maximum permissible period during which liquidation proceedings can be continued is 15 years. Section 109 of the MCS Act provides thus :-

> **109. Termination of liquidation proceedings**
>
> (1) The winding up proceedings of a society shall be closed as soon as practicable within six years from the date the Liquidator takes over the custody or control of all the property, effects and actionable claims to which the society is or appears to be entitled and of all books, records and other documents pertaining to the business of the society, under sub-section (2) of section 103), unless the period is extended by the Registrar or the Government:
>
> **Provided** that, the Registrar shall not grant any extension for a period exceeding one year at a time and four years in the aggregate:
>
> **Provided further** that, if it is necessary to grant further extension beyond ten years, the Registrar shall send proposal for such extension to the

Government. The Government may grant extension for a period not exceeding one year at a time and five years in the aggregate:

Provided also that, immediately, after the expiry of fifteen years from the date aforesaid, it shall be deemed that the liquidation proceedings have been terminated and the Registrar shall pass an order of terminating the liquidation proceedings:

Explanation.- In the case of a society which is under liquidation at the commencement of the Maharashtra Co-operative Societies (Second Amendment) Act, 1985 the period of six years shall be deemed to have commenced from the date on which the Liquidator took over the custody or control as aforesaid.

(2) Notwithstanding anything contained in the foregoing sub-section, the Registrar shall terminate the liquidation proceedings on receipt of the final report from the Liquidator. The final report of the Liquidator shall state that the liquidation proceedings of the society have been closed, and how the winding up has been conducted and the property of and the claims of the society have been disposed of, and shall include a statement showing a summary of the account of the winding up including the cost of liquidation, the amount (if any), standing to the credit of the society in liquidation, after paying of its liabilities including the share or interest of members, and suggest how the surplus should be utilised.

(3) The Registrar, on receipt of the final report from the Liquidator, shall direct the Liquidator to convene a general meeting of the members of the society for recording his final report.

(emphasis added)

60) Under provisions of the MCS Rules, the unrealised assets and the unrealised actionable claims at the conclusion of the liquidation proceedings vests with Registrar, who is supposed to appoint custodian or receiver to realise the same. Rule 89 provides thus:

89. Appointment of Liquidator and the procedure to be followed and powers to be exercised by him.

The following procedure shall be adopted for the appointment of the Liquidator and for the exercise of his powers, namely:

(1) The appointment of the Liquidator shall be notified by the Registrar in the Official Gazette.

(2) As soon as may be after the interim order is issued under Section 102,the Liquidator shall take over the custody and control of all the

property, effects and actionable claims and books, records and other documents pertaining to the business of the society and continue to hold custody and control thereof until the interim order is vacated.

(3) Where the interim order is vacated, the Liquidator shall take action in accordance with the provisions of sub-section (6) of Section 103.

(4) Where the Liquidator receives the Registrars final order confirming the interim order, the Liquidator shall publish by such means as he may think proper a notice requiring all claims against the society to be notified to him within two months of the publication of the notice and shall thereafter proceed to take such further action as he is empowered to take under the Act. All liabilities recorded in the account books of the society shall be deemed ipso facto to have been duly notified to the Liquidator under this rule.

(5) The Liquidator shall, after settling the assets and liabilities of the society as they stood on the date on which the order for winding up is made, proceed to determine the contribution to be made or remaining to be made to the assets of the society by persons and estates referred to in clause (h) of Section 105 and by order call upon each of them to pay the amount specified in the order as contribution and as costs of the liquidation determined under clause (k) of Section 105. Every such order shall be submitted for approval to the Registrar, who may modify it or refer it back to the Liquidator for further inquiry or other action or may forward it for execution under Section 98.

(6) If the sum assessed against any member is not recovered, the Liquidator may issue subsidiary order or orders against any other member or members to the extent of the liability of each for the debts of the society until the whole amount due from members is recovered. The provisions of sub-rule (5) shall mutatis mutandis apply to such orders.

(7) The Liquidator shall submit a quarterly progress report and such other returns and statements to the Registrar in such forms as the Registrar may require showing the progress made in the liquidation of the society.

(8) The Liquidator may empower any person, by general or special order in writing, to make collections and to grant valid receipts on his behalf.

(9) Unless otherwise permitted by the Registrar, all funds in charge of the Liquidator shall be deposited in the Apex State Co-operative Bank, or a Central Co-operative Bank or in the State Bank of India, and shall stand in the name of the Liquidator.

(11) The Liquidator shall have power to call meetings of members of the society in liquidation.

(10) The Registrar shall fix the amount of remuneration, if any, to be paid to the Liquidator. The remuneration shall be included in the cost of liquidation which shall be payable out of the assets of the society priority to other claims.

(11) The Liquidator shall have power to call meetings of members of the society in liquidation.

(12) The Liquidator may submit an application to the Registrar for the reconstruction of the society under Section 19 if he is of opinion that such reconstruction has a reasonable chance of success.

(13) The Liquidator may, at any time, be removed by the Registrar and he shall on such removal be bound to hand over all the property and documents relating to the society in liquidation to such person or persons as the Registrar may direct.

(14) (i)The Liquidator shall not exercise the powers under clauses (c), (d), (e), (f, (g), (h) and (k) of Section 105 without the prior approval of the Registrar.

(ii) An appeal against the order of the Liquidator under clauses (a), (b), (i), (j),(l), (m) and (n) of Section 105 shall lie to the Registrar.

(15) The Liquidator shall keep such books and accounts as may from time to time be required by the Registrar.

(16) At the conclusion of the liquidation proceedings, a general meeting of the members of the society shall be called. At such meeting, the Liquidator shall summarise his proceedings, point out causes of the failure of the society, and report what sum, if any, remains in his possession after meeting all the liabilities of the society as determined under the rules and suggest how the surplus, if any, should be utilised.

(17) At the conclusion of the liquidation proceedings, unrealized assets and unrealized actionable claims, if any shall vest in the Registrar, who may appoint a custodian or receiver, to realize such remaining assets and actionable claims as above and credit the same to the surplus. A custodian or receiver may sue or defend any disputes arising out of such proceedings thereunder:

Provided that, unrealized actionable claims shall be realized by the Registrar or custodian as the case may be and expenditure incurred for realization if any may be met out of the surplus kept at his disposal.

(emphasis added)

61) The maximum permissible period for liquidation of 15 years is prescribed under Section 109 of the MCS Act. In the present case, the Applicant-Bank has been under liquidation since 7 January 2009 and it is contended by Savannah that the liquidation proceedings can continue only until 12 February 2024, whereas the present application is filed on 21 August 2024 after the date of deemed termination of the liquidation proceedings. It is therefore contended that the Liquidator did not have authority to file the application after termination of the liquidation proceedings. Liquidator has contested this contention. It is contended that no formal order is passed as mandated under Section 109 of the MCS Act by Registrar for termination of liquidation proceedings and discharging the Liquidator. It is also contended that the Liquidator has sent letter to the Registrar seeking extension of time of three years for completion of the liquidation proceedings and that the Registrar has directed to submit final audit report vide letter dated 21 March 2024. It is contended by the liquidator that an audit report as on 26 February 1984 has been submitted alongwith letter dated 18 November 2022 and that the General Body of the Bank has resolved to continue the liquidation proceedings. That formal minutes of the AGM of the Bank are yet to be drawn up. The Liquidator therefore contends that she continues to remain in charge of the Applicant-Bank.

62) Rival parties have relied upon judgments in support of their respective contentions. Mr. Seervai has relied upon judgment of the Apex Court in ***Goa State Co-Operative Bank Limited*** (supra) in which the issue was whether the proceedings for recovery of dues instituted and pending against members would stand closed upon

expiry of period fixed for liquidation under Section 109 of the MCS Act. The Apex Court held in paragraphs No.18, 21 and 25 as under:

> **18.** It is apparent from the facts of the instant case that the winding up of the Society has been ordered and the Liquidator has been appointed as the Society has utterly failed to achieve its avowed objectives in disbursement of loans to proper persons and in its recovery. No doubt about it that the liquidation of the Society has come to an end after a particular period of time as fixed under Section 109. However, on lapse of time as fixed under sub-section (1) of Section 109 of the Act, proceedings have to be terminated by the Registrar on receipt of final report from the Liquidator as ordered under Section 109(2). However, at the same time, the Registrar has power to extend the period of 6 years fixed under Section 109(1), not exceeding one year at a time and four years in the aggregate, and maximum for 10 years. In case time is not extended, the winding up comes to an end on the expiry of 6 years or at the end of the extended period. The total period can be 10 years. The second proviso to Section 109 makes it clear that if the Registrar comes to a conclusion that the work of liquidation could not be completed by the Liquidator due to the reasons beyond his control, he shall call upon the Liquidator to submit his report. After getting the report, if the Registrar is satisfied that the realisation of assets, properties, sale of properties still remains to be realised, he shall direct the Liquidator to complete the entire work and carry out the activities only for the purposes of winding up and submit his report within such period not exceeding one year reckoned from the date of receipt of the report from the Liquidator.
>
> **21.** It is apparent that on the termination of the liquidation proceedings, liability of the members for the debts taken by them does not come to an end. There is no such provision in the Act providing once winding-up period is over, the liability of the members for loans obtained by them which is in their hands, and for which recovery proceedings are pending shall come to an end. No automatic termination of recovery proceedings against the members is contemplated. On the other hand, on completion of the period fixed to liquidate the Society, final report has to be submitted as to the amount standing to the credit of the Society in liquidation after paying off its liabilities including the share or interest of members. Thus, even in the case of liquidation the accountability remains towards surplus and liabilities do not come to an end. Even if the period fixed for liquidation of Society is over, that does not terminate the proceedings for recovery which have been initiated and appeals are pending.
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> **25.** Once a report has been submitted, the Registrar has to take action in terms of the report and in such circumstances when the proceedings for recovery are pending against the members and the Society has taken loan from the banks for its member, the actual money has to go to the creditor i.e. to the bank who is going to be benefitted by recovery of public money in the hands of members. In such cases it would be appropriate for the Registrar to send notice of the proceedings to a person who is to be benefitted from the recovery. In the instant case, the Bank itself is a prime lender-cum-liquidator. The proceedings cannot come to the end. Thus, in our considered opinion, it is open to the bank to continue with the recovery

proceedings and make recoveries from the defaulting members. Merely on the liquidation of the Society, or the factum that the period fixed for liquidation is over, liability of the members for the loans cannot be said to have been wiped off. The disbursement of loan in an arbitrary manner and failure to recover was the very fulcrum on the basis of which winding up of the Society was ordered.

63) On the other hand, Dr. Tulzapurkar has relied upon judgment of Division Bench of this Court in ***Ashok Kisanrao Hande*** (supra) in which it is held in paragraph No. 7 and 17 to 19 as under :-

7. It is mentioned in the Petition that the extension was granted for liquidation proceeding on 10/12/2009 for a period of one year. The Petitioner has made reference to the proceedings in the Small Causes Court, in respect of premises of which M/s. Sunrise was landlord. The premises of the said bank was in the possession of the liquidator. It is prayed in this Petition that the letters dated 07/04/2012 and 19/04/2012 denying further extension be set aside. The letter dated 19/04/2012 is the letter issued by the Government of Maharashtra to the Commissioner for Cooperation and Registrar Cooperative Societies for approaching the Assistant Government Pleader, High Court to file appropriate affidavit in WP No.315/12 pointing out the rejection of extension for liquidation. In the present proceedings we are only considering the question of extension of liquidation proceedings and we are not deciding any question related to the premises which are in possession of the liquidator.

17. As can be seen, the said section provides that, including extensions, the winding up proceedings cannot be extended beyond the period of 10 years, from the date on which, the liquidator took over custody of the said bank. The period provided under the said section is mandatory and cannot be extended in any circumstances. This view is expressed by a Division Bench of this Court at Nagpur in the judgment dated 15/12/2009 in WP No.1625/06 in the case of Dr.Raju @ Ramchandra Narendra Deoghare Vs. Government of India and others.

Paragraph No.46 of the said judgment reads thus;

"In our considered opinion, the ratio laid down in the above referred judgment of the Madhya Pradesh High Court, which was delivered after considering the Apex Court judgment is squarely applicable in the present case. The language of Section 157 of the Act is clear and unambiguous. Section 157 of the Act does not give power to the State Government to validate continuation of Liquidator after his period is over in terms of Section 109 of the Act....."

18. The Division Bench has given detailed reasons for making such observations and we respectfully agree with these observations. In our view therefore, the extension cannot be given beyond the period prescribed u/s 109 of the said Act and section 157 of the said Act cannot be brought in aid to seek such extension beyond the prescribed period.

19. After filing of this Petition in the year 2014 subrule 17 was introduced in Rule 89 of the Maharashtra Cooperative Societies Rules, 1961. SubRule 17 of the Rule 89 reads thus;

> *(17) At the conclusion of the liquidation proceedings, unrealized assets and unrealized actionable claims, if any shall vest in the Registrar, who may appoint a custodian or receiver, to realize such remaining assets and actionable claims as above and credit the same to the surplus. A custodian or receiver may sue or defend any disputes arising out of such proceedings thereunder:*
> *Provided that, unrealized actionable claims shall be realized by the Registrar or custodian as the case may be and expenditure incurred for realization if any may be met out of the surplus kept at his disposal.*

64) In my view, considering the peculiar facts and circumstances of the case, it is not really necessary to delve deeper into the aspect of Liquidator's authority to file and maintain Interim Application No.13400 to 2024. Even if it is technically held that the Liquidator did not have authority to file Interim Application No. 13400 of 2024 as on 21 August 2024, Savannah would still have to face Review Petition No.85 of 2024 filed by Shaila Clubs. The real issue involved in the present case is whether the compromise is lawful and whether the order dated 21 October 2022 deserves to be recalled and /or reviewed. After having arrived at the conclusion that compromise is unlawful and the order passed by this Court on 21 October 2022 deserves to be recalled, I am not inclined to entertain the technical plea sought to be raised by Savannah about Liquidator's *locus* to file Interim Application for recall, especially in the light of the fact that the order is otherwise reviewable on application filed by Shaila Clubs and its suspended director.

65) On the issue of delay in filing of Interim Application No.13400 of 2024 and in filing the two Review Petitions, it is well settled position of law that mere delay, not involving latches, acquiescence or estoppel, would not prevent this Court from exercising inherent power of recalling its order. The inherent power of this Court in recalling an order is not circumscribed by considerations of delay. Once this Court arrives at a conclusion the compromise is unlawful and could not have been acted upon by this Court, mere delay would not be a hurdle for this Court to recall and/review the recording of unlawful compromise. Reliance by Mr. Seervai on judgments in ***Annada Prasad Mitra, Somar Bhuiya, Pooranchand Mulchand Jain, M.M. Thomas*** and ***State of Maharashtra V/s. Digambar*** (supra) in this regard is apposite. Once this Court arrives at a conclusion that the compromise itself is unlawful, mere delay in filing applications for recall or review cannot be a reason for shutting the doors of this Court on technical ground of delay. I am therefore not discussing the ratio of various judgments relied upon by Mr. Seervai on the proposition of mere delay not coming in the way of the Court setting aside an obvious error. I am inclined to allow Interim Application No.10662 of 2024 filed for condonation of delay in Review Petition No.85 of 2024. It appears that Shaila Clubs had actually filed the Review Petition No.38 of 2023 in January 2023 itself and fresh Review Petition was required to be filed by its suspended Director on account of initiation of CIRP against Shaila Clubs. This is yet another reason why delay in filing Review Petition No.85 of 2024 deserves to be condoned.

66) After considering the overall conspectus of the case, I am of the view that the order passed by this Court on 21 October 2022 on the basis of Minutes of Order dated 20 October 2022 deserves to be

recalled both in application filed by the Bank as well as in the Review Petitions filed by Shaila Clubs and its suspended director.

67) I accordingly proceed to pass the following order:

i. Interim Application No.10662 of 2024 filed for seeking condonation of delay in filing Review Petition No. 85 of 2024 is allowed.

ii. Order dated 21 October 2022 passed in Writ Petition No. 11610 of 2022 in view of Minutes of Order dated 20 October 2022 is recalled.

iii. Writ Petition No.11610 of 2022 is restored. List the petition for admission on 2 April 2024.

68) With the above directions, Interim Application No.13400 of 2022 as well as Review Petition Nos.85 of 2024 and 38 of 2023 are **allowed.** Nothing would survive in rest of the Interim Applications, which are disposed of.

[SANDEEP V. MARNE, J.]